# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-738

LOUIS PARISI, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted on four counts of having transported forged checks in interstate commerce in violation of 18 U.S.C. 2314 and of having conspired to commit those substantive offenses in violation of 18 U.S.C. 371. He was sentenced to concurrent terms of three years' imprisonment on each count pursuant to the provisions of 18 U.S.C. 4208(a)(2). The court of appeals affirmed without opinion.



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The evidence showed that on October 16, 1967, Matthew Weinstein [1] opened a checking account at a New York bank in the name of Benjamin H. Noden. He testified that he opened this account at petitioner's request using money supplied by petitioner. Benjamin H. Noden was deceased at this time, having died of natural causes on October 3, 1967. Petitioner subsequently supplied Weinstein with three checkbooks from banks in California for accounts in the name of Benjamin H. Noden. Weinstein executed sight drafts in Noden's name directing the banks to transfer the balance of the accounts to the New York account. Petitioner then had Weinstein sign blank checks in Noden's name which petitioner subsequently completed and cashed (Tr. 15–16, 47–62, 133–142, 375–388, 397, 402–408, 414, 424).[2] Weinstein's testimony was corroborated by a handwriting expert who testified that he compared exemplars of petitioner's handwriting with the checks in question and concluded that petitioner had prepared those checks (Tr. 302–303).

Petitioner's sole contention is that the handwriting exemplars were obtained in violation of the Fourth Amendment and therefore should not have been admitted into evidence at trial. The exemplars were obtained on December 12, 1969, when petitioner met with Agent Larson of the F.B.I. at the F.B.I. office

[1] Matthew Weinstein was indicted with petitioner; he pleaded guilty to the conspiracy count prior to trial and testified as a government witness at trial.

[2] "Tr." refers to the reporter's transcript of the proceedings at trial.

in Morristown, New Jersey. Petitioner was not under arrest at this time nor was he in custody. Agent Larson, however, informed petitioner of his rights by reading the rights and waiver form to him. Petitioner then read the form and signed it, indicating he understood the contents (Tr. 276–278). Petitioner thereafter furnished handwriting exemplars as Agent Larson gave him blank check forms and asked him to fill them in while Larson dictated the information. Larson testified that petitioner "cooperated fully," and "voluntarily" gave the samples (Tr. 276–283, 288–289).

Relying on *United States* v. *Harris,* 453 F. 2d 1317 (C.A. 8), petition for a writ of certiorari pending (No. 71–6416), petitioner argues that the taking of handwriting exemplars constituted a search and seizure prohibited by the Fourth Amendment and that, since he was not specifically informed that he could refuse to give the writing samples, his consent could not have been voluntary.

Petitioner's reliance on *Harris, supra,* is misplaced. There the Eighth Circuit held that handwriting exemplars obtained from a juvenile who was not in custody or under arrest at the time were admissible; the court specifically rejected a contention similar to the one petitioner makes: that consent to the giving of exemplars had to be found involuntary in the absence of warnings to the youth or his parents that he could refuse the request. *Harris, supra,* 453 F. 2d at 1321–1322. That court did hold in a case joined with *Harris* for appellate decision (*United States* v. *Long*) that a district court had properly found as a

matter of fact that the defendant had not freely consented to the furnishing of exemplars where he was improperly in custody at the time, had invoked his Fifth Amendment privilege under *Miranda* v. *Arizona*, 384 U.S. 436, but had not been provided an attorney as he requested, *and* had not been advised that he could refuse to give the writing samples. See *Harris, supra*, 453 F. 2d at 1322–1323.

Those facts, of course, bear no resemblance to what took place in the present case. Here petitioner was not under arrest or in custody. Moreover, he had received his full *Miranda* warnings before providing the exemplars, and knew he could summon his attorney at any time, but he did not elect to do so. Petitioner does not suggest that he gave the exemplars due to any coercion or duress. In this situation petitioner's voluntary writing of the exemplars made them admissible at trial, and the decision below in no way conflicts with the decision of the Eighth Circuit in *Harris* and *Long, supra*.[3]

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[3] Contrary to petitioner's contention there is no conflict between the Eighth Circuit's holding in *Harris*, *supra*, and the ruling of the Second Circuit in *United States* v. *Doe*, 457 F. 2d 895. *Doe* deals with the compulsory production of handwriting exemplars pursuant to a grand jury subpoena and is currently pending on petition for a writ of certiorari *sub nom. Cynthia Schwartz* v. *United States*, No. 71–6522. The propriety of requiring exemplars for use by a grand jury is presently pending before the Court in *United States* v. *Dionisio*, No. 71–229, and *United States* v. *Mara*, No. 71–850, both argued November 6, 1972. There is no reason to hold this case pending the outcome in *Dionisio* and *Mara* since here the exemplars were

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It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

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voluntarily given after *Miranda* warnings, and not sought pursuant to a grand jury subpoena.

The question whether consent to the search of an automobile was involuntary because not preceded by advice that consent could be withheld is before the Court in *Schneckloth* v. *Bustamonte*, No. 71-732, argued October 10, 1972. The Second Circuit in *Doe* (*Schwartz*) concluded that the taking of handwriting exemplars is not a "search" at all, since a person normally has no expectation of privacy in his handwriting. The relevant Fourth Amendment question, in the Second Circuit's view, is whether the underlying police-citizen encounter is a lawful "seizure" of the person. In the present case, there is no contention that petitioner's appearance at the F.B.I. office for an interview was involuntary or illegal.

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